

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

27166

FILE: B-213643

DATE: January 5, 1984

MATTER OF: Detroit Broach and Machine

DIGEST:

1. Protest concerning proposed sole-source award filed after closing date for receipt of proposals is untimely since agency's publication of notice in Commerce Business Daily of decision to negotiate with one source and of closing date placed protester on notice of basis of protest prior to closing date.
2. Untimely protest of sole-source procurement does not present significant issue within meaning of section 21.2(c) of Bid Protest Procedures since GAO has issued numerous decisions setting forth basic principles governing such procurements.

Detroit Broach and Machine (DBM) protests the proposed sole-source award to Rudel Machinery Co. (Rudel) under solicitation No. DAAA22-83-R-9009 issued by the United States Army Watervliet Arsenal for rifling machines. DBM contends that it is capable of providing the required equipment and requests an opportunity to compete with Rudel for the award of the contract.

We dismiss the protest.

DBM's initial protest to the Army was received on September 22, 1983, and DBM filed its protest with our Office on November 4, 1983. The Army has advised our Office that notice that sole-source negotiations were being conducted and that the approximate closing date for receipt of proposals was September 15, 1983, was synopsized in the Commerce Business Daily (CBD) on August 19, 1983. The Army indicates that the actual closing date for receipt of proposals was September 21, 1983.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), require that protests based upon alleged solicitation improprieties which are apparent before the closing date for receipt of offers must be filed before that date.

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We have held that publication of a procurement in the CBD constitutes constructive notice of the solicitation and its contents. See Micro-Mil, Inc., B-202703, May 1, 1981, 81-1 CPD 335; MTS Systems Corporation, B-200131, September 30, 1980, 80-2 CPD 234. Accordingly, DBM is charged with notice of the Army's decision to negotiate on a sole-source basis with Rudel and of the closing date for receipt of proposals. Thus, its protest concerning this matter filed with the Army 1 day after the closing date for receipt of proposals is untimely.

DBM suggests that the reason protest proceedings were not initiated in a more timely fashion was due to actions taken by the Army which misled DBM. This argument is based primarily upon the allegation that prior to the CBD notice DBM had been in touch with the procuring activity concerning the procurement and that the CBD notice statement of the "approximate opening date 15 September 83" indicated no decision had been made to go sole source. In addition, DBM alleges that its protest presents a significant issue exception within the meaning of 4 C.F.R. § 21.2(c) (1983).

DBM's allegation that its delay in protesting was the result of actions or representations by the Army does not excuse DBM from compliance with our bid protest timeliness requirements. Our Bid Protest Procedures provide objective criteria for application by our Office to all protests before us and may not be waived by the actions or representations of the contracting agency. Glatzer Industries Corp.--Reconsideration, B-209440.2, March 1, 1983, 83-1 CPD 211. Since the CBD notice clearly stated that this "procurement is restricted to Rudel" and offers "will not be accepted from other firms," DBM was sufficiently apprised of the intention to make a sole-source award prior to the "approximate" closing date.

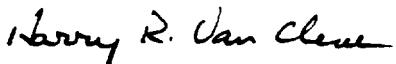
With respect to DBM's contention that our Office should consider this protest ground under our significant issue exception, we stated in Sequoia Pacific Corporation, B-199583, January 7, 1981, 81-1 CPD 13, that:

"In order to invoke the significant issue exception to our timeliness rules, the subject matter of the protest must not only evidence a matter of widespread interest or importance to the procurement community, see e.g., Willamette Western Corporation; Pacific Towboat and Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 CPD 259, but must also involve a matter which has

not been considered on the merits in previous decisions. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225; Wyatt Lumber Company, B-196785, February 7, 1980, 80-1 CPD 108; Garrison Construction Company, Inc., B-196959, February 26, 1980, 80-1 CPD 159."

This exception to our timeliness rules is strictly construed and sparingly used to prevent our timeliness rules from being rendered meaningless. The protest here does not fall within the exception. In our view, the issue of whether a particular purchase should have been made by competitive procurement rather than through a sole-source award is not of sufficient interest to the procurement community to invoke that exception. Kemp Industries, Inc., B-206653, March 19, 1982, 82-1 CPD 262. Further, we have numerous decisions setting for the basic principles governing sole-source procurements. See, Amray, Inc., B-209186, June 30, 1983, 83-2 CPD 45; Taylor Associates, B-206070.3, April 22, 1983, 83-1 CPD 431. Thus, while we recognize the importance of this matter to the protester, we do not believe the propriety of this sole-source procurement should be considered a significant issue within the meaning of our Bid Protest Procedures.

The protest is dismissed.


Harry R. Van Cleve
Acting General Counsel



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-213643

January 5, 1984

The Honorable Strom Thurmond
United States Senate

Dear Senator Thurmond:

We refer to your letter dated November 30, 1983, in the protest of Detroit Broach and Machine concerning the award of a contract to Rudel Machinery Co. under solicitation No. DAAA22-83-R-9009 issued by the United States Army Watervliet Arsenal.

By decision of today, copy enclosed, we have dismissed the protest.

Sincerely yours,

A handwritten signature in cursive script that reads "Harry R. Van Cleve".

Harry R. Van Cleve
Acting General Counsel

Enclosure



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-213643

January 5, 1984

The Honorable William S. Broomfield
House of Representatives

Dear Mr. Broomfield:

We refer to your letter dated November 23, 1983, in the protest of Detroit Broach and Machine concerning the award of a contract to Rudel Machinery Co. under solicitation No. DAAA22-83-R-9009 issued by the United States Army Watervliet Arsenal.

By decision of today, copy enclosed, we have dismissed the protest.

Sincerely yours,

Harry R. Van Cleve
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Acting General Counsel

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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-213643

January 5, 1984

The Honorable Carl Levin
United States Senator
1860 McNamara Building
Detroit, Michigan 48226

Dear Senator Levin:

We refer to your letter dated November 21, 1983, in the protest of Detroit Broach and Machine concerning the award of a contract to Rudel Machinery Co. under solicitation No. DAAA22-83-R-9009 issued by the United States Army Watervliet Arsenal.

By decision of today, copy enclosed, we have dismissed the protest.

Sincerely yours,

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-213643

January 5, 1984

The Honorable Donald W. Riegle, Jr.
United States Senator
1850 McNamara Federal Building
Detroit, Michigan 48226

Dear Senator Riegle:

We refer to your letter dated November 23, 1983, in the protest of Detroit Broach and Machine concerning the award of a contract to Rudel Machinery Co. under solicitation No. DAAA22-83-R-9009 issued by the United States Army Watervliet Arsenal.

By decision of today, copy enclosed, we have dismissed the protest.

Sincerely yours,

A handwritten signature in cursive script that reads "Harry R. Van Cleve".

Harry R. Van Cleve
Acting General Counsel

Enclosure